

Georgia Department of Natural Resources

Environmental Protection Division

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June 4, 2015

MEMORANDUM

To: Judson H. Turner, Director
Environmental Protection Division

From: James A. Capp, Chief
Watershed Protection Branch

Subject: Responses to Comments Received During the Public Comment Period
Regarding Proposed Amendments to Rules for Outdoor Water Use,
Chapter 391-3-30; Rules for Groundwater Use, Chapter 391-3-2; and
Rules for Water Quality Control, Chapter 391-3-6

On April 13, 2015, EPD issued a public notice requesting comments on proposed Amendments to Rules for Outdoor Water Use, Chapter 391-3-30; Rules for Groundwater Use, Chapter 391-3-2; and Rules for Water Quality Control, Chapter 391-3-6. Public hearings were held at 1:00 p.m. on May 5, 2015, in the EPD Training Center located at 4244 International Parkway, Suite 116, Atlanta, Georgia 30354. The public comment period ended May 13, 2015.

EPD received 18 sets of comments on the proposed rules during the comment period. These included comments from four public water systems, three associations representing counties, municipalities, and water authorities, six associations representing agriculture and green industry, one electric utility, and one environmental group. There was also one alliance that represented a broad coalition of business, industry, local government, water service providers, utilities, and agribusiness interests. A summary of the comments received and EPD's responses to the comments is attached. No changes to the proposed rules are recommended as a result of comments received.

Responses to Comments Received During the Public Comment Period
April 13, 2015-May 13, 2015
Regarding Proposed Amendments to Rules for Outdoor Water Use, Chapter 391-3-30

- 1) Comment:** Many of the commenters expressed general satisfaction with the rules and the process that EPD went through to develop the rules.

Response: Noted.

- 2) Comment:** Several commenters requested clarification as to whether or not there were any restrictions on outdoor water other than the general watering of plants during times of non-drought. A couple of these commenters also noted that regulatory language can be confusing to the public, which could lead to less effective implementation.

Response: The only restrictions on outdoor water use in this rule (Chapter 391-3-30) during times of non-drought are those specified in 391-3-30-.03(1)(a), which restricts irrigation outdoors for purposes of planting, growing, managing, or maintaining ground cover, trees, shrubs, or other plants between 10 a.m. to 4 p.m. each day (there are some exceptions to these hourly restrictions listed in paragraph (b)). There are no other homeowner related restrictions on outdoor water use including pressure washing or car washing in Chapter 391-3-30. EPD intends to develop easy to understand guidance that can be used by the media, homeowners, businesses, and public water systems so the application of these rules during various levels of drought is easier to understand. EPD would also be willing to assist any associations and/or groups develop guidance that targets their specific constituency.

- 3) Comment:** One commenter stated that the rule should include more pre-drought measures. They specifically requested that the measures in the Metropolitan North Georgia Water Planning District (Metro District) plan be expanded statewide.

Response: The Regional Water Councils are in the beginning stages of updating their plans; that process will allow for consideration of other pre-drought measures appropriate for their specific area, including those measures adopted by the Metro District.

- 4) Comment:** Several commenters wanted specific triggers and methodology for evaluating the listed drought indicators. These commenters did not want the decision to declare drought to be under the discretion of the Director without a defined protocol. Some of these commenters suggested that the decision to declare a drought be taken away from the EPD Director and given to a committee.

Response: The proposed rule states that drought “declaration shall be based on the severity of drought conditions and their impact on the ability of permittees that are public water systems to provide adequate supplies of water.” This is consistent with the statute, particularly the language that bases variance decisions on whether or not they are necessary and appropriate to avoid or relieve a local water shortage. Given the unique circumstances and complexities surrounding every drought, including the differing effects it can have on local water supplies, it is not appropriate to establish

fixed criteria that would mandate a particular level of drought declaration (and geographical scope) under predetermined conditions or to give that decision making authority to a committee. In order to ensure that drought declaration decisions are made as transparently, effectively and timely as possible, the proposed rules set up the following protocol:

1. EPD tracks an extensive list of drought indicators and publishes a public report of these indicators at least monthly.
2. Public water systems have long been required to have a drought contingency plan that includes drought indicators and triggers for their system as a condition of their water withdrawal permit. The new proposed rule includes a requirement for EPD to be notified if any such trigger level is surpassed so that EPD has that information as it evaluates whether or not to officially declare a drought under this rule.
3. Prior to making an official drought declaration, EPD will convene a conference call with potentially affected permittees and will allow those permittees three business days to provide data to EPD to inform its decision making process.
4. If a public water system disagreed with EPD's decision, it could request a variance (for either more or less stringent restrictions) and EPD is required to make a decision on such requests within 5 business days.

This protocol is appropriate for our state under the statute.

5) Comment: Two commenters requested that jurisdictions be allowed to establish their own drought indicators and triggers and to make drought declarations based on those levels.

Response: When the State legislature passed O.C.G.A. §12-5-7 and §12-5-8 in 2008 (HB 1281) it very clearly established a system where drought response would be established by the DNR Board through rulemaking and that public water systems would follow those rules or would obtain a variance from those rules from the EPD Director. As such, these rules adhere to that structure as established in the statute and do not delegate those decisions to other entities. As mentioned in the response to the previous comment, public water systems are already required to have their own drought contingency plan including indicators and triggers and the proposed rule requires them to notify EPD if any trigger level is surpassed.

6) Comment: Several commenters stated that EPD should not address water rate structures such as tiered conservation pricing or drought surcharge rates in these rules. Rate making decisions should be left to the water providers. The opposition to such inclusion was generally on the basis that:

- a. It is not appropriate to include rate structures in a rule related to drought management;
- b. Rate structures are the authority of the water provider and were outside the purview of EPD; and
- c. This would be a dangerous precedent which could lead to many unintended consequences.

Response: Water rate structures and drought surcharge programs can be effective water conservation tools to reduce consumption during drought. Therefore, including the drought surcharge program and tiered conservation pricing program in the rule is appropriate. EPD notes that public water systems may choose which program best fits their needs and that the drought surcharge program would only be implemented during the highest level of drought. EPD is not mandating the actual rate that a public water system would charge, but is only prescribing the structure of those rates. It is also appropriate under the relevant statutes for EPD to include rate structures as part of this rule. For example, the Georgia Water Stewardship Act of 2010 in §12-5-4(b) directs EPD to identify and provide for rules and regulations (without limitation) to: “(11) Provide incentives for residential and commercial water conservation pricing by public water systems;” and “(14) Examine the effect that water conservation has on water rates and consider policies to mitigate the financial impact that rate increases or reductions in water use have on water utilities and water users.”

7) Comment: One commenter advocated that the rule should require year round tiered conservation rate structures for all public water systems statewide.

Response: Public water systems should be able to choose between year round conservation pricing or a drought surcharge program. For systems that have a very effective tiered conservation structure, a drought surcharge program may not be as effective as it would be for a system that did not already have a tiered conservation rate structure. The rule would not prevent a public water system from employing both, but employing both is not required.

8) Comment: Several commenters with agriculture and green industry affiliations stated that the 13 activities listed in 391-3-30-.03(1)(b) that are exempt from the 10 a.m. to 4 p.m. watering restriction during non-drought times, and which also are listed in the Georgia Water Stewardship Act of 2010, should continue to be exempt during all levels drought, including the highest level of drought. The proposed rule allows all of those 13 activities during the highest level of drought, but does subject 5 of those activities to some best management practices and/or time of day limitations. Several commenters with public water systems or environmental groups commented that EPD’s regulation of those 5 activities during the highest level of drought was appropriate.

Response: Allowing those activities, as proposed, subject to reasonable best management practices and/or time of day limitations is good policy and consistent with the underlying statute.

9) Comment: Two commenters questioned how EPD would use the peaking factor or the “Baseline Water Use and Efficiency Profile for Public Water Systems” when determining numeric water usage reduction requirements.

Response: Each of these documents would be used by EPD to establish a realistic numeric water usage reduction level for that public water system. A system with a higher summer time peaking factor should be able to reduce summer time water usage more than a system with a lower summer time peaking factor, for example.

10)Comment: Several commenters stated that the rule should apply also to agricultural permits and industrial permits.

Response: These Rules apply to water use by industrial permittees for irrigation and other outdoor purposes. In addition, both categories cited are subject to other requirements to improve efficiency.

11)Comment: Several commenters advocated for a drought response committee under 391-3-30-.06. However, there was disagreement amongst the commenters as to who should be on the committee and what charge and/or roles the committee should have. One commenter advocated that the committee help develop information materials for the public. Another commented that the Director should not be allowed to determine who was on the committee, but that the rule should specify the committee's composition, role, and authority.

Response: The authority for the Director to establish a committee is included in the rule; it is not necessary to designate members of such a committee at this time. As proposed, the Rule provides appropriate flexibility to allow tailoring of committee composition and roles to specific circumstances EPD plans to develop easy to understand guidance for the media, homeowners, businesses, and public water systems so the application of these rules during various levels of drought is easier to understand. EPD will seek input from interested parties to help develop this material.

12)Comment: One commenter stated that the definition of public water system should include a minimum number of service connections as specified in the Rules for Safe Drinking Water (391-3-5-.02(96) – 15 service connections or 25 individuals) or Georgia Water Stewardship Act of 2010 (O.C.G.A. 12-5-4.1(a)(2) – at least 3,300 individuals).

Response: Applicability to this rule is limited to "Permittees," including permittees with Safe Drinking Water Permits, if they also hold a water withdrawal permit or get their water from someone who holds a water withdrawal permit. As such, the definition of public water system effectively matches the definition in the Rules for Safe Drinking Water.

13)Comment: One commenter stated that the entire section in 391-3-30-.07 should exclude public water systems that do not serve retail customers. This is because many, if not all, of the section's requirements are logical only in that context.

Response: Certain provisions that are only logical for public water systems that serve retail customers, such as the public information campaign in 391-3-30-.07(2), would not

apply to a permittee that technically meets the definition of a public water system but does not serve retail customers. However, many of the provisions in 391-3-30-.07 pertain to outdoor water uses such as irrigation, fountains, and vehicle washing. All of these provisions would apply to a permittee, including a public water system permittee, regardless of whether or not it serves retail customers.

14) Comment: One commenter stated that the rule should not establish a rebuttable presumption that variances should be denied for permittees who get more than 25 percent of their water from a project controlled by the United States Army Corps of Engineers (USACE).

Response: Allowing permittees who get their water from a water body that is controlled by the USACE to request a variance, but to have that request overcome a rebuttable presumption that the variance should be denied, is appropriate. Because the public water system doesn't control the releases from USACE projects, and because those reservoirs serve multiple needs and not just water supply, it is appropriate to require a higher standard before allowing less stringent drought measures.

15) Comment: One commenter stated that public water systems should not have to apply for a variance from EPD to enact more stringent restrictions on outdoor water use. However, the same commenter requested a higher bar than the proposed rule in order for public water systems to get a variance for less stringent restrictions.

Response: O.C.G.A § 12-5-7 clearly requires public water systems to get a variance from EPD in order to impose more (or less) stringent restrictions on outdoor water use. The standard provided in the statute is a "good cause" showing that provides evidence sufficient to support a reasonable conclusion, considering available relevant information, that such additional restrictions are necessary (or not necessary for less stringent restrictions) and appropriate to avoid or relieve a local water shortage. EPD is required to act on such requests within 5 business days. Therefore, EPD has no discretion to waive this requirement.

Responses to Comments Received During the Public Comment Period
April 13, 2015-May 13, 2015
Regarding Proposed Amendments to Rules for Groundwater Use, Chapter 391-3-2

- 1) **Comment:** A few commenters stated that the proposed change was unclear. They noted that the rules require a drought contingency plan but that the State Drought Management Rule would prevail if the two were inconsistent. They questioned the purpose of having a local drought contingency plan if the State Drought Management Rule would supercede it.

Response: The reason for the proposed rule change is because O.C.G.A. §12-5-7 and §12-5-8 (HB 1281 in 2008) clearly established a system where drought response strategies would be established by the DNR Board through rulemaking and that public water systems would follow those rules or would obtain a variance from those rules from the EPD Director in order to impose restrictions on outdoor water use that were different than the rule developed under O.C.G.A §12-5-8.

- 2) **Comment:** EPD also received a few comments on other rules in Chapter 391-3-2 that are not part of this rulemaking.

Response: EPD has reviewed and noted these comments, but they are outside the scope of this rulemaking.

Responses to Comments Received During the Public Comment Period
April 13, 2015-May 13, 2015
Regarding Proposed Amendments to Rules for Water Quality Control, Chapter 391-3-6

1) **Comment:** A few commenters stated that the proposed change was unclear. They noted that the rules require a drought contingency plan but that the State Drought Management Rule would prevail if the two were inconsistent. They questioned the purpose of having a local drought contingency plan if the State Drought Management Rule would supercede it.

Response: The reason for the proposed rule change is because O.C.G.A. §12-5-7 and §12-5-8 (HB 1281 in 2008) clearly established a system where drought response strategies would be established by the DNR Board through rulemaking and that public water systems would follow those rules or would obtain a variance from those rules from the EPD Director in order to impose restrictions on outdoor water use that were different than the rule developed under O.C.G.A §12-5-8.

2) **Comment:** EPD also received a few comments on other rules in Chapter 391-3-6 that are not part of this rulemaking.

Response: EPD has reviewed and noted these comments, but they are outside the scope of this rulemaking.